

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7251
DATE COMPLAINT FILED: May 30, 2017
DATE OF NOTIFICATIONS: June 5, 2017
LAST RESPONSE RECEIVED: Aug. 28, 2017
DATE ACTIVATED: Oct. 6, 2017

EARLIEST SOL: May 31, 2018
LATEST SOL: Oct. 14, 2019
ELECTION CYCLE: 2014

COMPLAINANT:

William Fowlkes

RESPONDENTS:

Barry Loudermilk
Desiree Jean Loudermilk
Loudermilk for Congress and Charles Nida in his
official capacity as treasurer
Loudermilk for State Senate
Earl Leroy "Buddy" Carter
Buddy Carter for Congress and Paul Kilgore in his
official capacity as treasurer
Lindsey Allen Tippins
Tippins for State Senate
Shultz for Georgia
Leonard Edwin Setzler
Citizens to Elect Ed Setzler
Ralph Hudgens
Friends of Ralph Hudgens

RELEVANT STATUTES AND REGULATIONS:

52 U.S.C. § 30122
52 U.S.C. § 30125(e)
11 C.F.R. § 110.3(d)
11 C.F.R. § 110.4(b)
11 C.F.R. § 300.62

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

1 **I. INTRODUCTION**

2
3 During the 2014 election cycle, Barry Loudermilk served as a Georgia State Senator
4 while he simultaneously ran for Congress in Georgia's 11th Congressional District. The
5 Complaint alleges that Loudermilk engaged in a "conduit contribution" scheme in which he used
6 funds from Loudermilk for State Senate ("State Committee") to contribute to other Georgia
7 candidates, who in turn contributed like sums to Loudermilk for Congress and Charles Nida in
8 his official capacity as treasurer ("Federal Committee") thereby serving as conduits for transfers
9 from the State Committee to the Federal Committee.¹ The Complaint also alleges that the State
10 Committee made a contribution to the Federal Committee when it paid Loudermilk's wife,
11 Desiree Loudermilk, for "administrative assistance" when in fact she was providing services for
12 the Federal Committee, resulting in a violation of the soft money ban.² In a joint response, the
13 Loudermilks, the State Committee, and the Federal Committee argue that the Complaint fails to
14 allege sufficient facts to establish the existence of any contribution scheme, and also deny that
15 the State Committee spent impermissible funds in connection with the payments to Desiree
16 Loudermilk.

17 Based on the available information and for the reasons discussed below, we recommend
18 that the Commission find no reason to believe that Barry Loudermilk, Loudermilk for State
19 Senate, and Loudermilk for Congress and Charles Nida in his official capacity as treasurer
20 violated 52 U.S.C. § 30122 and 11 C.F.R. §§ 110.4(b) and 110.3(d) in connection with the

¹ Compl. at 1-4 (May 30, 2017).

² Compl. at 4. *See* 52 U.S.C. §§ 30122, 30125(e)(1)(A). The Complaint also states that these payments and other "administrative assistance" payments to Desiree Loudermilk constitute the conversion of state campaign funds to personal use. *Id.* As the Loudermilk response points out, these allegations are not within the jurisdiction of the Federal Election Campaign Act of 1971, as amended (the "Act"). *See* Barry Loudermilk, Desiree Loudermilk, Loudermilk for Congress and Charles Nida in his official capacity as treasurer, and Loudermilk for State Senate Resp. at 5 (Aug. 8, 2017).

1 alleged reciprocal contributions, find no reason to believe that Barry Loudermilk and
2 Loudermilk for State Senate violated 52 U.S.C. § 30125(e)(1) by making payments to Desiree
3 Jean Loudermilk, dismiss the allegation that Barry Loudermilk and Loudermilk for State Senate
4 violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 300.62 by making campaign contributions with
5 non-federal funds, find no reason to believe Mrs. Loudermilk violated 52 U.S.C. § 30122 by
6 receiving payment for administrative services from Loudermilk for State Senate, and find no
7 reason to believe the remaining respondents, consisting of various political committees and
8 candidates, violated 52 U.S.C. § 30122 by serving as conduits in the alleged reciprocal
9 contribution scheme.

10 II. FACTUAL AND LEGAL ANALYSIS

11 At issue in this matter is whether Loudermilk engaged in a scheme to convert funds from
12 his State Committee to his Federal Committee through reciprocal contributions with the recipient
13 committees serving as conduits for these transfers; and whether the State Committee spent
14 impermissible nonfederal funds for contributions to recipient committees and for administrative
15 expenses after Loudermilk became a federal candidate.

16 The Act prohibits federal candidates, federal officeholders, their agents, and entities
17 established, financed, maintained, or controlled ("EFMC'd") by federal candidates or
18 officeholders from soliciting, receiving, directing, transferring, or spending funds in connection
19 with any election unless the funds are subject to the limitations, prohibitions, and reporting
20 requirements of the Act.³ Further, Commission regulations prohibit the transfer of funds or
21 assets from a candidate's campaign committee for a nonfederal election to his or her principal

³ 52 U.S.C. § 30125(e)(1); 11 C.F.R. § 300.62.

1 campaign committee.⁴ The Act also prohibits making a contribution in the name of another,
2 knowingly permitting one's name to be used to effect such a contribution, and knowingly
3 accepting a contribution made in the name of another.⁵

4 Georgia law permits state campaign funds to be used to defray costs associated with state
5 assembly members' official duties.⁶ Such state officeholder expenses and administrative costs
6 of maintaining a state committee would not fall under the restrictions of section 30125 if they are
7 unrelated to any election.⁷

8 **A. Alleged Reciprocal Contributions**

9 The Complaint alleges that the State Committee made \$2,750 in contributions and the
10 Federal Committee received \$3,250 in contributions as part of a scheme to impermissibly
11 transfer State Committee funds to the Federal Committee using the recipient committees as
12 conduits for these transfers.⁸ Specifically, the Complaint identifies five instances after
13 Loudermilk became a federal candidate where the State Committee made a contribution to a
14 federal or state candidate that was preceded by or followed by a contribution to the Federal
15 Committee by the same committee or a related committee or individual.⁹ Thus, the complaint

⁴ 11 C.F.R. § 110.3(d); *see also* Transfers of Funds from State to Federal Campaigns, 57 Fed. Reg. 36,344, 36,345 (Aug. 12, 1992) ("Transfers E&J") (explaining the transfer prohibition as intended to prevent "indirect" use of impermissible funds).

⁵ 52 U.S.C. § 30122; *see also* 11 C.F.R. § 110.4(b).

⁶ GA. CODE ANN. § 21-5-33.

⁷ *See* Advisory Op. 2003-20 (Reyes) (explaining that "[i]f the funds are not raised or spent in connection with an election, then the funds do not fall within the scope of" section 30125); AO 2009-26; Advisory Op. 2004-14 (Davis). *See also* Advisory Op. 2016-25 (Mike Pence for Indiana) (stating that campaigns "may use nonfederal funds in its state campaign account to pay for the storage of state campaign assets, legal or accounting expenses necessary to comply with state disclosure requirements applicable to state committees, and legal or accounting expenses for winding down the state campaign, provided that such spending is consistent with state law").

⁸ *Id.* at 4.

⁹ Compl. at 2-3.

1 alleges that through these reciprocal contributions the Respondents engaged in a conduit
2 contribution scheme.

3 The following chart represents the transactions at issue:

Contribution from State Committee	Amount	Date	Alleged Reciprocal Contribution to Federal Committee	Amount	Date
Tippins for State Senate	\$500	10/24/2014	Tippins for State Senate	\$1,000	10/29/2014
Citizens to Elect Ed Setzler	\$500	10/22/2014	Citizens to Elect Ed Setzler	\$500	3/31/2014
Friends of Ralph Hudgens	\$500	10/14/2014	Suzanne Hudgens (spouse of state candidate Ralph Hudgens)	\$500	7/18/2014 ¹⁰
Shultz for Georgia	\$250	12/12/2013	Thomas Schultz (state candidate)	\$250	5/31/2013
Buddy Carter for Congress	\$1,000	6/28/2013 ¹¹	Friends of Buddy Carter	\$1,000	6/27/2013 ¹²
TOTAL	\$2,750		TOTAL	\$3,250	

4 In response, the Loudermilk Respondents argue that the Complaint does not show that
5 any of the State Committee contributions were earmarked or contained any "designations,
6 instructions and encumbrances," and they state that the Loudermilk Respondents made no other
7 express or implied instruction to the recipient committees.¹³ The recipient committees either

¹⁰ Loudermilk for Congress Second Amended October Quarterly 2014 Report at 29 (Mar. 27, 2015).

¹¹ Buddy Carter for Congress Amended July Quarterly 2013 Report at 61 (Sept. 4, 2013).

¹² Loudermilk for Congress July Quarterly 2013 Report at 48 (Jul. 15, 2013).

¹³ See Loudermilk Resp. at 3.

1 deny the existence of a reciprocal contribution scheme or argue that the Complaint fails to allege
2 sufficient information to establish such a scheme.¹⁴

3 The Commission has previously considered alleged arrangements to transfer a state
4 committee's funds into a federal committee's account through intermediaries, finding a violation
5 only when similarities in contribution amounts and timing were supported by additional
6 information.¹⁵ The Commission has not found reason to believe in prior matters where the
7 complaints provided no information beyond alleged similarities in contribution amounts and
8 timing, or where credible information suggested that the similar contributions were not
9 earmarked or part of a conduit or reciprocal contribution scheme.¹⁶

10 The Complaint in this matter relies solely on similarities in the timing and amounts of the
11 contributions to support the argument that Respondents participated in a reciprocal contribution
12 scheme, even though some of the alleged reciprocal contributions lack even these similarities.
13 For example, on May 31, 2013, Thomas Shultz contributed \$250 to the Federal Committee and
14 on December 12, 2013 (six and a half months later), the State Committee contributed \$250 to

¹⁴ See Tippins for State Senate and Tippins Resp. at 1 (July 10, 2017); Buddy Carter, Buddy Carter for Congress and Paul Kilgore in his official capacity as treasurer, and Friends of Buddy Carter for Senate Resp. at 2 (Aug. 29, 2017); Leonard Edwin Setzler Resp. at 2 (June 30, 2017); Suzanne Hudgens Resp. at 1 (June 29, 2017); Ralph Hudgens and Friends of Ralph Hudgens Resp. at 1 (June 21, 2017); Schultz for Georgia Resp. at 1 (June 21, 2017).

¹⁵ See Factual & Legal Analysis at 3-4, MUR 5278 (Gingrey) (the Commission found reason to believe and entered into conciliation after Gingrey admitted in a state proceeding to having arranged four "reciprocal contributions" for the purpose of funneling state funds into his federal account.); *see also* Advisory Op. 1996-33 (Colantuano) (concluding that understanding between state and federal candidate to exchange contributions would result in impermissible transfer).

¹⁶

see also MURs 5732 (Matt Brown for U.S. Senate), 5520 (Republican Party of Louisiana/Tauzin), 5445 (Davis), 5406 (Hynes), 5125 (Perry), and 4643 (Perry).

1 Thomas Shultz's campaign for Georgia State School Superintendent.¹⁷ Similarly, the State
2 Committee made a \$500 contribution to Citizens to Elect Ed Setzler almost seven months after
3 Citizens to Elect Ed Setzler made a \$500 contribution to the Federal Committee.¹⁸ In another
4 instance, the Complaint cites a \$500 contribution from Suzanne Hudgens, the wife of state
5 candidate Ralph Hudgens, as the reciprocal contribution for a \$500 contribution from the State
6 Committee to Friends of Ralph Hudgens.¹⁹ The lack of similarities in timing, amount, and even
7 source of contributions undermines the Complaint's conclusion that these contributions were part
8 of a reciprocal contribution scheme where the recipient committees served as conduits for
9 transfers between the State Committee and Federal Committee.

10 The Complaint does not allege, and the available record does not include, any additional
11 information to support the allegations and the series of contributions at issue are legal on their
12 face. Thus, based on Commission precedent, there does not appear to be a sufficient factual
13 nexus between the transactions to conclude that the State Committee was impermissibly
14 funneling its funds through the recipient committees to the Federal Committee as part of a
15 conduit scheme.²⁰ Accordingly, we recommend that the Commission find that there is no reason
16 to believe Barry Loudermilk, Loudermilk for State Senate, or Loudermilk for Congress violated
17 52 U.S.C. § 30122 or 11 C.F.R. §§ 110.4(b) and 110.3(d) and the recipient committees violated
18 52 U.S.C. § 30122 in connection with the alleged reciprocal contributions.

¹⁷ Compl. at 3.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰

MUR 7246 (Buddy Carter for Congress, *et al.*)
(open matter) contains similar and overlapping allegations as this MUR, and makes similar recommendations.

B. State Committee Spending After Loudermilk Became a Federal Candidate

The Complaint also alleges that the State Committee and Loudermilk violated 30125(e) when the State Committee, after Loudermilk became a federal candidate, spent non-federal funds in connection with a federal or a non-federal election for (1) \$3,336.39 in payments to Desiree Loudermilk for administrative assistance,²¹ and (2) the contributions (discussed above) in the amounts of \$1,000, \$500, \$250, \$250, and \$500 to Buddy Carter for Congress, Tippins for State Senate, Schultz for Georgia, Citizens to Elect Ed Setzler, and Friends of Ralph Hudgens, respectively.²² Because Loudermilk EFMC'd the State Committee,²³ any funds the State Committee transferred, spent, or disbursed in connection with a federal or non-federal election after he became a federal candidate on April 20, 2013, were required to comply with the restrictions of section 30125(e). Furthermore, because Loudermilk was not a simultaneous state and federal candidate, he could not take advantage of the Act's exception allowing candidates simultaneously running for federal and state office to spend nonfederal funds "solely in connection with such election for State or local office."²⁴

The State Committee did not accept any contributions after Loudermilk became a federal candidate, but it had previously accepted corporate contributions. Thus some portion of the disbursements made after Loudermilk became a federal candidate were from funds that did not

²¹ Compl. at 4-5.

²² *Id.* at 4. The Complaint does not address the majority of the expenditures made by the State Committee after Loudermilk became a federal candidate, which appear to be similar to permissible administrative and officeholder expenses under Georgia law that the Commission has previously concluded are unrelated to an election. See Factual and Legal Analysis at 3-6, MUR 6820 (Carter, *et al.*).

²³ See Advisory Op. 2009-26 (Coulson) at 5 ("AO 2009-26") (concurrent state representative and federal House candidate); Advisory Op. 2007-01 (McCaskill) at 3 (former state candidate and current Federal Senate candidate and officeholder); Factual & Legal Analysis at 9, MUR 6601 (Oelrich) (concurrent state senator and Federal House candidate).

²⁴ See 52 U.S.C. § 30125(e)(2); Advisory Op. 2005-02 (Corzine) at 2, 4; Advisory Op. 2003-32 (Tenenbaum) at 5.

1 comply with the Act's source prohibitions.²⁵ We discuss below each of the Complaint's
2 allegations that the Committee spent such nonfederal funds on a federal or nonfederal election in
3 violation of the Act.

4 1. There is No Reason to Believe the State Committee Transferred Funds to the
5 Federal Committee Through Payments to Desiree Loudermilk
6

7 The Complaint argues that the State Committee payments to Desiree Loudermilk for
8 administrative assistance were for services actually provided to the Federal Committee and thus
9 constituted the conversion of State Committee funds to the Federal Committee. However, the
10 available information does not support the Complaint's allegation.

11 The Complaint fails to provide any specific information to support the allegation that the
12 payments to Mrs. Loudermilk were payments for services she provided to the Federal Committee
13 as opposed to bona fide salary payments for services she provided as treasurer to the State
14 Committee.²⁶ Furthermore, the available record shows that Mrs. Loudermilk had a longstanding
15 history of providing administrative assistance to the Loudermilk's campaign committees dating
16 back to 2007 when she provided administrative services to the Barry Loudermilk Election
17 Committee, Loudermilk's committee when he was a Georgia State Representative.²⁷ Mrs.
18 Loudermilk also provided administrative assistance and served as treasurer to the State
19 Committee when Loudermilk was in the Georgia State Senate prior to his federal candidacy.
20 Following Loudermilk's declaration of federal candidacy, the State Committee paid Mrs.

²⁵ Georgia law permits individuals, corporations, political committees, and political parties to contribute up to \$2,500 to primary candidates for the General Assembly. *See* Georgia Government Transparency and Campaign Finance Act (Effective January 1, 2014), Article 2 § 21-5-35(a). The State Committee's disclosure reports did not reflect any facially excessive individual contributions during the period at issue in this matter.

²⁶ *See* MURs 5387 and 5446 (Welch for Wisconsin, *et al.*) at 20-21 (payment to spouse for serving as Committee treasurer was a bona fide salary payment and not a pretext for a transfer to the candidate's federal committee).

²⁷ Loudermilk Resp. at 4-5.

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1 Loudermilk a total of \$5,886.39 over 30 months for administrative expenses – an average of only
2 \$200 per month and in line with the payments she received from Loudermilk's committees
3 before he became a federal candidate.

4 The Commission has previously concluded that payments for expenses and
5 administrative costs of maintaining a state committee would not amount to spending funds in
6 connection with an election under section 30125.²⁸ Based on the available information, we
7 recommend the Commission find no reason to believe the State Committee violated 52 U.S.C. §
8 30125(e)(1) with respect to the payments to Mrs. Loudermilk and that the Commission find no
9 reason to believe Mrs. Loudermilk violated 52 U.S.C. § 30122 in connection with such
10 payments.

11 2. The Commission Should Dismiss the Allegation that the State Committee
12 Made Impermissible Contributions with Nonfederal Funds
13

14 Though we conclude that the \$2,750 in contributions from the State Committee that are
15 the subject of the Complaint do not appear to be reciprocal contributions, the Complaint alleges
16 that these contributions also violated section 30125 because the State Committee used non-
17 federal funds to make the contributions. The Commission has allowed federal candidates who
18 are state officeholders to donate federally permissible funds in a state account to other state and
19 local political committees if the state committee uses a "reasonable accounting method" to
20 separate permissible from impermissible funds (*i.e.*, those raised consistent with state law but
21 outside the Act's contribution limits and source restrictions), and makes the contributions with
22 permissible funds.²⁹ The State Committee does not assert that it used a reasonable accounting

²⁸ See Factual and Legal Analysis at 3-6, MUR 6820 (Carter, *et al.*).

²⁹ Advisory Op. 2007-26 (Schock) at 3-5; Advisory Op. 2006-38 (Casey) at 4.

1 method to separate the funds it used to make the campaign contributions, although in its
2 response, the State Committee represents that it had "sufficient federally acceptable funds to
3 cover the amount of the contributions at the time they were made."³⁰

4 Based on the State Committee's disclosure reports, it is unclear whether it had sufficient
5 federally permissible funds to cover the campaign contributions. Permissible individual
6 contributions comprised only \$1,050 of the State Committee's funds while facially
7 impermissible corporate contributions totaled \$8,050.³¹ The remaining contributions to the State
8 Committee were from PACs, trade associations, and LLCs. Without more information
9 concerning these donors' organizational structures, we cannot determine whether those
10 contributions would be federally permissible.

11 Nevertheless, given that \$2,750 in campaign contributions are at issue and we can
12 identify at least \$1,050 in permissible funds, we recommend that the Commission exercise its
13 prosecutorial discretion and dismiss the allegation that Loudermilk and the State Committee
14 violated 52 U.S.C. § 30125(e)(1) by spending soft money for campaign contributions after
15 Loudermilk became a federal candidate.

16 **III. RECOMMENDATIONS**

- 17
18 1. Find no reason to believe that Barry Loudermilk, Loudermilk for State Senate,
19 and Loudermilk for Congress and Charles Nida in his official capacity as treasurer
20 violated 52 U.S.C. § 30122, 11 C.F.R. § 110.4(b) or 11 C.F.R. § 110.3(d) by
21 engaging in a reciprocal contribution scheme;
22

³⁰ Loudermilk Resp. at 4.

³¹ Loudermilk for State Senate June 30, 2012 Georgia State Filing at 4 (July 9, 2012); Loudermilk for State Senate December 31, 2012 Georgia State Filing at 4 (Jan. 8, 2013).

2. Find no reason to believe that Barry Loudermilk and Loudermilk for State Senate, violated 52 U.S.C. § 30125(e)(1) by making payments to Desiree Jean Loudermilk;
3. Dismiss the allegation that Barry Loudermilk and Loudermilk for State Senate violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 300.62 by spending impermissible funds in connection with a federal or non-federal election;
4. Find no reason to believe that Desiree Jean Loudermilk, Earl Leroy "Buddy" Carter, Buddy Carter for Congress and Paul Kilgore in his official capacity as treasurer, Lindsey Allen Tippins, Tippins for State Senate, Shultz for Georgia, Leonard Edwin Setzler, Citizens to Elect Ed Setzler, Ralph Hudgens, and Friends of Ralph Hudgens violated 52 U.S.C. § 30122;
5. Approve the attached Factual and Legal Analysis;
6. Approve the appropriate letters; and
7. Close the file.

Lisa J. Stevenson
Acting General Counsel

2/2/18
Date

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